

STATE OF NEW HAMPSHIRE

DEPARTMENT OF STATE

IN THE MATTER OF:)
)
Local Government Center, Inc. et al) Case No.: C-2011000036
)
RESPONDENTS)
)

OMNIBUS ORDER

(This order resolves the matters in conflict raised by the Bureau of Securities’ Motion for Entry of Default Order against the HealthTrust, Inc., and Property Liability Trust, Inc. This order summarizes the administrative proceedings in this matter, incorporates into the orders’ provisions the terms and conditions of a consent decree entered into between the parties, and addresses the Intervenors’ motion seeking to receive a portion of the funds to be received by the HT from the PLT.)

PROCEDURAL BACKGROUND

On September 2, 2011 the Bureau of Securities Regulation (hereinafter “BSR”) initiated a Staff Petition against the then Local Government Center, Inc. and its several entities¹ alleging certain violations of the “Pooled Risk Management Program Statute,” Revised Statutes Annotated 5-B (RSA 5-B:1 et seq.) and, among other things, requested that the respondents cease and desist conduct that violated this statute. On September 2, 2011 the Secretary of State approved the Petition and issued an Order to Cease and Desist, an Order to Show Cause, and a Hearing Order, pursuant to RSA 421-B:26-a,V. These actions resulted in the initiation of administrative hearing proceedings as provided by Revised Statutes Annotated 421-B:26. These administrative

¹ As of the issuance of the January 10, 2014 Supreme Court decision in this matter, named Respondents included the Local Government Center, Inc., Local Government Center Real Estate, Inc., Local Government Center HealthTrust, LLC, Local Government Center Property-Liability Trust, LLC, HealthTrust, Inc., New Hampshire Municipal Association Property-Liability Trust, Inc., LGC-HT, LLC, and Local Government Center Workers' Compensation Trust, LLC.

proceedings have involved extensive litigation before the undersigned presiding officer.² A final order issued on August 16, 2012. Following a denial for reconsideration of the final order, an appeal on that order was taken to the Supreme Court on October 15, 2012 and accepted by the Supreme Court on November 14, 2012. The parties argued the matter before the court on November 13, 2013. The Supreme Court issued its decision on January 10, 2014 (*Appeal of the Local Government Center*, Docket No. 2012- 0729, slip-opinion) affirming the August 16, 2012 final order excepting aspects of the order relating to the prospective setting of reserve levels and the prospective purchase of reinsurance. The additional matter of repayment of legal fees by the respondents was remanded by the Supreme Court and is addressed in the terms and conditions expressed in the consent decree.

On February 7, 2014 following the Supreme Court’s affirmation, in the main, of the August 16, 2012 order, and after gaining knowledge of a confidential agreement entered into between the HT and the PLT, the BSR filed a post decision “Motion for Entry of Default Order” against the respondents presently known as the HealthTrust, Inc. (hereinafter “HT”) and the Property Liability Trust, Inc. (hereinafter “PLT”). On February 18, 2014 the respondents filed objections to the BSR request. Thereafter, preliminary motions to dismiss the BSR motion on the basis of a lack of jurisdiction were filed by the respondents. Also a motion to disqualify the presiding officer was filed by counsel for respondent HT. Both of these motions were denied. The parties filed their respective dispositive motions requesting summary judgment and corresponding objections thereto. Following a hearing on these dispositive motions each was denied and the final hearing on the merits remained as previously scheduled to begin on July 21, 2014.³

A “Motion to Intervene” in the proceedings was filed on behalf of several municipalities that were alleged to have been political subdivision members of the respondent HT at some prior time.⁴ The request to

² See Final Order dated August 16, 2012 for details and also view www.sos/nh.gov for record of all prior legal proceedings in this matter.

³The contents of all parties’ filings and of the orders issued also can be viewed in detail at www.sos/nh.gov under the heading “Post Supreme Court Decree filings.” A transcript of the hearing on the summary motions is also available at that site.

⁴ These municipalities were initially represented to be: Salem, Peterborough, Meredith, Plainfield, Bennington and Temple; by oral motion to amend its prior request without objection by the parties, counsel for the intervenors, requested the following municipalities to be added: Auburn, Northfield.

intervene in these proceedings at this time was for the limited purpose of being heard on their participation in any distribution of funds by HT due to the repayment of funds by PLT to HT. There was no objection to the intervenors' motion by any party, and obtaining an oral waiver from all parties and the proposed intervenors of the need for a hearing, the presiding officer verbally granted the motion to allow the intervenors to participate for the expressed limited purpose. That order was formally issued on June 25, 2014.

On July 18, 2014 the PLT filed a motion to allow the sale of certain real estate interests that was to have been addressed by the parties following the presentation of evidence at the planned hearing on the merits.

By agreement of the parties, the final evidentiary hearing was to have been conducted on July 21, 2014 and July 22, 2014 in Concord, New Hampshire with all parties and the intervenors represented by legal counsel. Following a conference of counsel with the presiding officer immediately preceding the convening of the hearing, the parties requested time to consult with each other and their clients to consider settlement of their disputed issues, as raised by the BSR's motion. The parties thereafter requested that the proceedings be recessed until the following day to allow continued and full consideration of settlement.

The parties requested that the hearing remain in recess on the second day. Before recessing for the day, the presiding officer convened the hearing on the intervenors' motion to amend its initial motion in order to expand representation to include two additional municipalities. Without objection by any party, the motion to amend was granted. Thereupon, the "Intervenors' Motion Proposing Manner of Distributing Funds to Former Members of HealthTrust", as amended, was heard. All parties were provided the opportunity to address the issues raised by this motion. The BSR took no position. The HT objected and PLT joined in that objection. The presiding officer took the matter under advisement for consideration of the arguments made and the motion hearing was then adjourned. The hearing on the merits remained in recess as settlement discussions continued.

The issue of legal costs, remanded by the Supreme Court, was to be later addressed between the BSR, HT and PLT with the expectation by the parties being the later submission of an agreement to the presiding officer. Lacking agreement, that matter would be separately scheduled for hearing.

Thereafter the parties: BSR, HT, and PLT continued to undertake substantial effort to reach agreement on issues related to the BSR motion for entry of a default judgment which resulted in a proposed "Consent Decree" submitted to the presiding officer for acceptance. This order follows:

BSR Motion for Entry of a Default Judgment

1. The terms and conditions contained within the Consent Decree signed by the parties and dated July 25, 2014 and in which the parties agree that this matter is resolved are incorporated into this order.
(See Consent Decree, Attached)
2. Providing further that, since the parties have stipulated that the jurisdiction for enforcement shall remain with the presiding officer "for so long as this Consent Decree remains in full force and effect," such actions and limitations upon the parties as appear in the consent decree that have not specifically expired by its terms or have been otherwise modified by legislative action, shall be the subject of a meeting of the parties on or before June 30, 2016. After that date, a statement confirming satisfaction of all terms of the consent decree shall be filed with the Office of the Secretary of State. In the alternative, any of the parties may file a motion alleging violation of any remaining provision of the consent decree and an administrative hearing to consider the necessity of the continuation of the subject provision shall be conducted.
3. The parties have reserved the right to request future participation by the presiding officer in the event that specified incidents occur during the implementation of the provisions of the order. In the event that the presiding officer shall be unable to fulfill the obligations of that office or be otherwise unavailable, the parties shall, as soon as possible, first participate in mediation conducted by a

mediator agreeable to both parties. In the event mediation does not resolve the issue or issues in conflict within thirty (30) days then, upon motion by any party directed to the Secretary of State, the matter shall proceed with a replacement presiding officer as the law may dictate.

Intervenors' Motion Proposing Manner of Distributing Funds to Former Members of HealthTrust

The intervenors seek to obtain some portion of the funds that HT shall distribute to its members as contemplated by the orders and decisions in this case and as further referenced in the terms and conditions of the consent decree. The intervenors argue that the distribution of funds by the HT to its members in the approximate amount of \$17.1 million is contrary to RSA 5-B, the so-called "Pooled Risk Management Statute" and is inconsistent with the underlying rationale of the August 16, 2012 final administrative order. The BSR takes no position on the issue raised by the intervenors. The HT, joined by the PLT, objected and advanced arguments in direct opposition to those of the intervenors. The intervenors do not represent any parties other than those eight municipalities named in their motion as amended. (See note #4). While the claim of groups of employees, former employees and retirees were referenced by counsel, no argument to achieve legal standing for such individuals was advanced by counsel and therefore no standing of any other intervenors can be considered by the presiding officer.

There appears to be little foundation in law for the intervenors' position that they are entitled to some proportionate share because they are alleged to have been past members of HT or its predecessor. Their reliance on the "rationale" of the final administrative order, as previously authored by the undersigned, is in error. Relevant references in that order are to "members," "member political subdivisions," and "participating political subdivisions." Specifically, the previous administrative order as affirmed by the Supreme Court directed that these "re-payment" funds shall be returned to members consistent with RSA 5-B:5,I(c). (Final Administrative Order ¶ 14). There is no provision that these re-payment funds, or any funds under consideration by that order, were to be paid to past members or former members.

The “Pooled Risk Management Program” statute does not make provision for any past or former member of a pooled risk management program. RSA 5-B:5,I(c) provides only for returns to “participating political subdivisions,” not any past or former participating political subdivisions. Applying rules of statutory construction considering the statute as a whole and assigning a word’s ordinary meaning in interpreting the statute, the more reasonable interpretation is that the word “participating” is a present participle attached to its subject, “political subdivisions.” A participle, i.e. a verb used as an adjective, in this instance indicates shows tense. That tense is the present tense.

The intervenors’ oral reference at hearing to *Harper v. Healthsource*, 140 N.H. 770, (involving RSA 420-C and a health maintenance organization's decision to terminate its relationship with a particular physician) provides little support for a “public policy” argument to be applied in this administrative proceeding. An expression of public policy must be expressed in a statute, rule, ordinance or other such authoritative document. The expression of public policy here is that expressed in RSA 5-B.

A fair reading of the law of this case in its entirety could not reasonably be interpreted to include former or past or intermittent or periodic members to qualify as recipients of disbursements provided for in the August 16, 2012 final order. Any proportionality referenced in that order was to be made within a universe of participating political subdivisions.

It may also be noted that the uncontroverted evidence in this case reveals that John Andrews, former executive director of HT’s predecessor, authored the language of the legislative bill that became RSA 5-B. Given this authorship and given the highly competitive circumstances among pooled risk program entities revealed by the evidence, no reasonable inference can be taken that Andrews’ language was intended to benefit political subdivisions that had left his organization’s fold.

The law was then and is now that the presiding officer in an administrative proceeding must apply the statute, as the expression of the legislature's intent, in reaching a decision. The authority provided to a presiding officer under the governing statutes here, RSA 421-B and RSA 5-B, as with most administrative hearing officers, does not allow application of any powers in equity.

Therefore, the intervenors' motion is denied.

So ordered, this 4st day of August, 2014


Donald E. Mitchell, Esq., NH Bar#1773
Presiding Officer

cc: Barry Glennon, Esq.
Adrian S. LaRochelle, Esq.
Michael D. Ramsdell, Esq.
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Peter Baylor, Esq.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE

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)	
Local Government Center, Inc., et al.)	C-2011000036
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CONSENT DECREE

NOW COME the Parties, the Petitioner, the New Hampshire Bureau of Securities Regulation (“BSR”), a part of the Corporations Division within the Department of State, and the current Respondents, HealthTrust, Inc. (“HT”) and Property-Liability Trust, Inc. (“PLT) and agree on the terms of the following Consent Decree subject to the Presiding Officer’s approval. The Parties agree that the Presiding Officer may enter the following Order on the Petitioner’s pending Motion for Entry of Default Order.

1. The Final Administrative Order, at ¶13, requires that PLT re-pay the \$17.1 Million subsidy which it had received from HT or its predecessors. To date PLT has paid \$15,399,109.00 on this obligation. The remaining \$1.7 Million due on this obligation shall be repaid by PLT to HT as follows:

- a. PLT shall pay \$519,000.00 cash to HT within thirty (30) days of this consent decree, time being of the essence.
- b. PLT shall receive a credit of \$1,181,891.00 for its previous transfer of all of its shares in Center at Triangle Park, Inc. to HT.

2. The BSR will not take any regulatory action against PLT based solely and exclusively on the payments made pursuant to ¶1, ¶9, and ¶12 of this Consent Decree. PLT and

the BSR agree to meet to discuss the booked loss reserve levels and confidence levels applicable to the property-liability coverage line, which discussions may take place at a monthly meeting described in ¶10 below.

3. All of PLT's contracts which are currently in full force and effect, including, but not limited to, policies of insurance, binders, and similar contractual obligations, shall be honored for their remaining terms, which run through June 30, 2016 .

4. PLT and HT acknowledge that they are each subject to a State of New Hampshire Department of Labor Administrative Order, dated April 29, 2014 that provides at ¶4 "Neither HT nor PLT shall incur any new contractual obligations for future membership in the workers' compensation self-insured employer pool without the Commissioner's advance approval . . ."

5. PLT may not transfer any of its assets outside of the ordinary course of business without the permission of the BSR or an order of the Presiding Officer.

6. Unless authorized by the Presiding Officer pursuant to ¶7 below, and subject to ¶3 above, PLT shall not: (a) issue any new policies of insurance, binders, or similar contractual obligations; (b) renew or extend the term of any existing policy, binder, or existing contractual obligations; or (c) cancel any existing contract or policy for the purpose of extending the original expiration date. Unless authorized by the Presiding Officer pursuant to ¶7 below, upon expiration of its existing policies of insurance, binders, or similar contractual obligations, PLT shall run-off its remaining obligations.

7. On or before June 30, 2015, PLT may petition the Presiding Officer seeking permission to issue new and renewal policies of insurance, binders, and similar contractual obligations for those lines of coverage in which PLT currently operates. In order for any such Petition to be granted, PLT shall bear the burden of proof to show that PLT has sufficient

financial viability to allow it to issue and honor said policies or renewals without subsidization by HT or any other entity. The BSR shall have the right to object to any such Petition filed with the Presiding Officer. If PLT fails to carry its burden of proof, PLT shall not issue new or renewal policies of insurance, binders, or similar obligations and shall run-off its then outstanding obligations.

8. Pursuant to this Consent Decree, HT agrees that it will not offer insurance coverage or self-insurance for any of the programs currently being provided by PLT, including, but not limited to, workers compensation, any type of liability coverage, and unemployment compensation insurance, unless the Presiding Officer grants a Petition filed by HT permitting same, or unless RSA 5-B is amended to specifically allow a health insurance program to offer the programs currently being offered by PLT. The BSR shall have the right to object to any such Petition filed with the Presiding Officer. HT shall bear the burden of proving that it can conduct the business of supplying these lines of coverage free of conflicts, in a financially reasonable fashion, without subsidization from HT's existing coverage lines, and that its doing so is in the public's better interest.

9. For a period of twelve (12) months from the date of this Consent Decree, the BSR shall be entitled to have a Liaison, of its own choosing, on-site at both PLT and HT's business location. The function of the Liaison will be to assess, liaise and inform the BSR Director of the business operations and activities of HT and PLT. The Liaison shall perform his duties in a professional and constructive manner. The Liaison shall be entitled to reasonable access to both PLT's and HT's executive directors, chief financial officers, chief operating officers, risk pool manager in charge of rate setting, outside actuaries, and external auditors, in a non-disruptive manner. The Liaison shall not engage the outside actuaries and external auditors without the

participation of the CFO, in the case of the auditors, and both the CFO and the Risk Pool Administrator, in the case of the actuaries, of the applicable risk pool. The Liaison shall be entitled to be present at and make inquiry of and respond to questions of the Board at Board or Board Committee Meetings for both PLT and HT, with the exception of any portions of said meetings which are legitimately non-public pursuant to RSA 91-A:3. The BSR agrees to respect the attorney-client privilege of the risk pools. The Liaison shall be provided with a reasonable work-space at the business offices located at 25 Triangle Park Drive. The Liaison shall have access to all business, financial records, and non-privileged legal records of both PLT and HT. The purpose of the Liaison's record requests shall be to assess the current and prospective operations of the applicable risk pool. The Liaison shall be subject to mutually agreed protocols regarding confidentiality and privacy of confidential business, personnel, claims, and other personally identifiable or protected health information relating to PLT's and HT's business operations in accordance with PLT's and HT's privacy policies and procedures. PLT and HT shall reimburse the BSR for one-half of the costs incurred by the BSR to employ the Liaison. The Liaison's salary will be \$180,000 annually. As between PLT and HT, reimbursement of the cost incurred by the BSR to employ the Liaison shall be allocated to PLT and HT with PLT paying 10% and HT paying 90%. The Liaison may be assisted by another BSR employee, at the BSR's expense. Any disputes regarding the role or activities of the Liaison shall be timely brought to the attention of the Executive Directors of HT and PLT, and to the BSR Director, who will seek to resolve them in the first instance. In the event the any dispute is not timely resolved, it may be submitted to the Presiding Officer for resolution.

10. During the term that the Liaison is in place, the Liaison, the Director of the BSR, and the Executive Director or Chief Operating Officer of both HT and PLT shall meet on a

monthly basis to discuss any issues which may arise, including but not limited to regulatory questions raised by either of the risk pools. If requested, the HT and PLT representatives shall be entitled to meet alone with the BSR Director for the purpose of discussing an issue with the Liaison.

11. The Presiding Officer shall retain jurisdiction over this Consent Decree and shall have the authority to enforce the provisions of this Consent Decree for so long as this Consent Decree remains in full force and effect.

12. The BSR shall be entitled to the fees, including attorney's fees, which it has incurred in bringing this Motion for Entry of Default Order. As well, pursuant to the January 10, 2014 order of the Supreme Court in this matter, the Presiding Officer is to determine the reasonable fees of the BSR for the prior proceedings. By agreement of the parties, the determination of these fees was delayed until the conclusion of this proceeding. The parties are directed to meet and confer and submit an agreed upon amount of fees no later than ten (10) days from the date that this Consent Decree has been approved by both the HT and PLT Boards, or a further hearing will be scheduled to determine these fees. Approved fees shall be split with HT paying 90% and PLT paying 10%. The Presiding Officer retains jurisdiction of this matter until these fee issues are resolved by agreement or order.

13. The parties waive all appeals from the enforcement proceeding which is resolved by this Consent Decree.

Respectfully submitted,

HEALTHTRUST, INC.

By Its Attorneys,

Dated: July 25, 2014

/s/ Michael D. Ramsdell
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PROPERTY-LIABILITY TRUST, INC.

By Its Attorneys,

Dated: July 25, 2014

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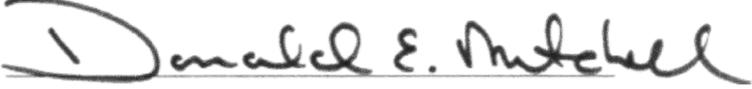
NEW HAMPSHIRE BUREAU OF
SECURITIES REGULATION

By Its Attorneys,

Dated: July 25, 2014

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SO ORDERED.

A handwritten signature in black ink that reads "Donald E. Mitchell". The signature is written in a cursive style with a large, looped initial "D".

Donald E. Mitchell, Esq., Presiding Officer